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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,202	11/01/2005	Yuri Shefler	2005-1030	9618

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EXAMINER	
STULII, VERA	

ART UNIT	PAPER NUMBER
1794	

NOTIFICATION DATE	DELIVERY MODE
11/16/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

Office Action Summary	Application No.	Applicant(s)	
	10/530,202	SHEFLER, YURI	
	Examiner	Art Unit	
	VERA STULII	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 August 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *10-23* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *10-23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 10-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jamnikov (RU 2,044,045) in view of Bobryshev (RU 2,175,010) and Filippova et al (US 5,618,573) for the reasons as sated in the Non-Final Office action mailed 03/05/2009.

Response to Arguments

Applicant's arguments filed 03/05/2009 have been fully considered but they are not persuasive.

On page 9 of the Reply to the Non-Final Office action mailed 03/05/2009, Applicants state that:

> As to the vodka, both BOBRYSHEV and JAMNIKOV fail to disclose a vodka containing bicarbonate as recited in claim 10.
> Both BOBRYSHEV and JAMNIKOV use pretreated water which is demineralized by using reverse osmosis as a starting material. Accordingly, any amount of the mineral bicarbonate in the water before pretreatment will be removed during the demineralization step of the pretreatment.
> Indeed, JAMNIKOV discloses on page 3, right column, lines 19-27 that such pretreated water may comprise some calcium, magnesium, copper, aluminum, silicium, sulfates, chlorides and phosphates, but JAMNIKOV fails to disclose that bicarbonate is present in the pretreated water.
> Furthermore, both BOBRYSHEV and JAMNIKOV fail to disclose or suggest adding bicarbonate to the water and alcohol mixture.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies

(i.e., treatment of water prior to use in vodka production or the step of adding bicarbonates) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicant does not claim any steps for treatment of water prior to the use in vodka production or addition of bicarbonates to vodka. While Jamnikov is silent as to the amount of bicarbonates in vodka, Jamnikov does not disclose that the amount of bicarbonates is outside the claimed range. It is also noted the specific amounts of bicarbonates in water are not claimed as well. Further in this regard. Applicant is referred to the Non-Final Office action mailed 03/05/2009 (page 10 bottom paragraph-page 11 top paragraph).

On page 10 of the Reply to the Non-Final Office action mailed 03/05/2009, Applicants state that:

> Moreover, BOBRYSHEV and JAMNIKOV also do not disclose the specific low levels of specific impurities in the vodka. Since both BOBRYSHEV and JAMNIKOV fail to disclose an amount of bicarbonate and the specific amount of impurities in the vodka, claims 10 and ii are unobvious over the cited documents, either taken alone or in combination.

In response in this argument it is noted that, although the references do not specifically disclose every possible quantification or characteristic of its product, including fusel oil content, sodium bicarbonate, etc, the fusel oil content, sodium bicarbonate and content of other substances would have been expected to be in the claimed range absent any clear and convincing evidence and/or arguments to the contrary. The combination of references discloses the same starting materials and

methods as instantly (both broadly and more specifically) claimed, and thus one of ordinary skill in the art would recognize that the fusel oil and sodium bicarbonate content, among many other characteristics of the referenced product, would have been a resultant property of the product disclosed therein. The Patent Office does not possess the facilities to make and test the referenced product, and as reasonable reading of the teachings of the reference has been applied and does anticipate the instant claims, the burden thus shifts to applicant to demonstrate otherwise.

In response to applicant's arguments against the references individually (see pages 1-12 of the Reply), one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Jamnikov discloses a process for preparing vodka, comprising mixing water and absolute alcohol to obtain a mixture, filtering the mixture, cooling the mixture to a temperature of -4°C, at which temperature the mixture is maintained for 8 hours, filtering the mixture, adapting the mixture to room temperature to obtain a filtrate (Abstract, page 3 col. 1 paragraph 5). Jamnikov discloses the following amounts of impurities in resulting vodka (mg per liter): Acetic aldehyde--0.44; Propionic aldehyde--traces; Methyl acetate--1.01; Ethyl acetate--0.5; Methyl propionate—traces; Ethyl propionate—traces; Methanol--42.5; Propyl alcohol—traces; Iso-bytyl alcohol—traces; Iso-amyl alcohol—traces.Bobryshev discloses a method of making vodka comprising the step mixing water and alcohol to obtain an aqueous-spirituous mixture with proof value 40% using rectified ethyl alcohol "LUKS" and purified

drinking water treated by reverse osmosis, treating the mixture with activated carbon (aqueous-spirituous solution is purified with activated carbon by its passing through carbon-cleansing battery), adding sugar (fructose), aroma compounds (extract of flax seeds) and other ingredients (ascorbic acid) (Abstract). Bobryshev discloses preparing vodka with improved organoleptic properties and nutrient value due to use of biologically active complex of flax seeds (Abstract). Bobryshev discloses that biologically active complex of flax seeds forms pleasant aroma-forming complex with ethyl alcohol esters and leads to formation of very mild and pleasant taste and typical vodka aroma (Abstract). Bobryshev discloses that "[f]or production of 1000 dal of vodka "SADKO" components are used in the following ratio: fructose, 5.5-6.5 kg; ascorbic acid, 0.04-0.06 kg; flax an aqueous- -spirituous infusion of the 1-st and the 2-d blend, 3.5-4.5 l; rectified ethyl alcohol "LUKS" and water treated by reverse osmosis, the balance, to obtain the blend value proof 40%" (Abstract). Filippova et al (Filippova) disclose a method of treating a mixture of ethyl alcohol and water for the reduction of impurities comprising: contacting the mixture with three layers of activated charcoal having specified surface activities at a temperature of from -45°C to -22°C, followed by contacting the mixture with three other layers of activated charcoal having specified surface activities at a temperature of from -22°C to 5 °C (Abstract). Filippova also disclose "This invention relates to a process for the treatment of aqueous ethyl alcohol to remove impurities therefrom. More particularly, the invention relates to a process, using supercooling technology, for the treatment of aqueous ethyl alcohol, obtained by fermentation of a cereal, to prevent formation of certain impurities during the process of

purification of aqueous ethyl alcohol, and to remove other impurities therefrom while maintain desirable organoleptic qualities in order to provide an improved, high alcoholic content beverage commonly referred to as vodka" (Col. 1 lines 7-16).

Since Jamnikov and Bobryshev both disclose production of vodka using similar ingredients and method steps, and Bobryshev discloses the addition of the flax seed extract that creates pleasant aroma forming complex, and addition of sugar and vitamin C (ascorbic acid) to increase nutrient value of the vodka and to stabilize formation of pleasant aroma forming complex, it would have been obvious to modify Jamnikov and to add at least flax seed extract, sugar and vitamin C to the aqueous-spirituous solution for the reasons as taught by Bobryshev. It would have been obvious to one of ordinary skill in the art to do so in order to increase the organoleptic properties of the final product such as taste, aroma, etc. It would also have been obvious to one of ordinary skill in the art to do so in order to increase the nutrient value of the final product such as taste, aroma, etc.

Since Jamnikov discloses filtering aqueous-spirituous mixture, and Bobryshev discloses purifying aqueous-spirituous mixture using activated carbon, one of ordinary skill in the art would have been motivated to modify Jamnikov in view of Bobryshev and to use activated carbon in order to purify aqueous-spirituous mixture as taught by Bobryshev. One of ordinary skill in the art would further have been motivated to do so, since activated carbon filtration is a conventional method of removing contaminants from the liquid. Thus, it would have been obvious to substitute one conventional filtration

method with another conventional filtration method used for purification and clarification of liquids.

Regarding the specific cooling temperature range, it is noted that, Jamnikov discloses that cooling aqueous-spirituous mixture leads to formation of precipitates that significantly effect (lower) organoleptic and physicochemical properties of vodka (page 3 col. 1 lines 50-54). Since Jamnikov discloses that cooling aqueous-spirituous mixture leads to formation of precipitates that significantly effect (lower) organoleptic and physicochemical properties of vodka, and therefore teaches reduction of impurities in vodka by cooling the aqueous-spirituous mixture, and Filippova discloses removing the impurities from vodka using supercooling technology, one of ordinary skill in the art would have been motivated to modify Jamnikov and to employ lower temperatures in the range as recited and as taught by Filippova for the reasons taught by Filippova. It would have been obvious to do so, in order to prevent formation of certain impurities during the process of purification of aqueous ethyl alcohol, and to remove other impurities therefrom while maintain desirable organoleptic qualities in order to provide an improved, high alcoholic content beverage commonly referred to as vodka as taught by Filippova. The specific cooling temperatures and times are seen to be routinely determinable result effective variables.

Since Jamnikov discloses naturally adapting the aqueous-spirituous filtrate temperature to a room temperature as claimed, it would have been obvious to employ a non-isolated container in order to speed-up the process of equalizing the temperature of the cooled vodka and ambient environment temperature.

In response to Applicant's arguments regarding activated coal (page 11 of the Reply 5th paragraph), it is noted that Jamnikov and Filippova are not relied upon as a teaching of activated coal treatment. Bobryshev is relied upon as a teaching of activated coal treatment.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VERA STULII whose telephone number is (571)272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steve Weinstein/
Primary Examiner, Art Unit 1794

/Vera Stulii/
Examiner, Art Unit 1794